

### Remarks

Applicants have carefully reviewed the Office Action mailed on December 9, 2005. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. Claims 23-26 remain pending.

The Examiner has asserted that restriction to one invention is required under 35 U.S.C. §121. A provisional election of invention II, corresponding to claims 23-27, was made on November 29, 2005. Applicants hereby affirm this election.

Claims 23, 24, 26, and 27 are rejected under 35 U.S.C. §102(a) as being anticipated by Eder et al. in U.S. Patent No. 6,585,753. The Examiner indicated that Eder et al. discloses a superelastic material that includes one portion which has been heat treated to have a higher flexibility or workability. Regardless of whether or not the Examiner is correct, this differs from the language of claim 23, which recites a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. A superelastic member having differential flexibility does not meet the language of claim 23. Based on this difference, Applicants respectfully submit that claim 23 is patentable over Eder et al. Because claims 24, 26, and 27 depend from claim 23, they are also distinguishable over the cited art for the same reason and because they add significant elements to distinguish them further from the art.

Claims 23, 24, 26, and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by Sagae et al. in U.S. Patent No. RE-36,628. Just like Eder et al., Sagae et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member

to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claims 24, 26, and 27 are all patentable over Sagae et al. and further because claims 24, 26 and 27 add significant elements to distinguish them further from the art.

Claims 23, 24, 26, and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by McNamara et al. in U.S. Patent No. 6,254,550. Just like the aforementioned references, McNamara et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claims 24, 26, and 27 are all patentable over McNamara et al. and further because claims 24, 26 and 27 add significant elements to distinguish them further from the art.

Claims 23, 24, 26, and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by Davis et al. in U.S. Patent App. Pub. No. US 2004/0111044. Just like the aforementioned references, Davis et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claims 24, 26, and 27 are all patentable over Davis et al. and further because claims 24, 26 and 27 add significant elements to distinguish them further from the art.

Claims 23 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sachdeva et al. in U.S. Patent No. 5,683,245. Just like the aforementioned references, Sachdeva et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claim 24 are both patentable over Sachdeva et al. and further because claim 24 adds significant elements to distinguish it further from the art.

Claims 23, 24, 25, and 26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kleshinski et al. in U.S. Patent No. 5,776,162. Just like the aforementioned references, Kleshinski et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claims 24-26 are all patentable over Kleshinski et al. and further because claims 24-26 add significant elements to distinguish them from the art.

Claims 23-26 are rejected under 35 U.S.C. § 102(b) as being anticipated by DiCarlo et al. in U.S. Patent No. 6,540,849. Just like the aforementioned references, DiCarlo et al. does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claims 24-26

are all patentable over DiCarlo et al. and further because claims 24-26 add significant elements to distinguish them from the art.

Claims 23 and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by Kaisha in EP 0395098. Just like the aforementioned references, Kaisha does not appear to teach or disclose a linear elastic member having at least one localized area of flexibility formed by selectively heating at least a portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for the same reason, Applicants respectfully submit that claim 23 as well as claim 27 are both patentable over Kaisha and further because claim 27 adds significant elements to distinguish it further from the art.

Claim 27 is rejected under 35 U.S.C. §103(a) as being unpatentable over Sachdeva et al., Kleshinski et al., or DiCarlo et al. As described above, claim 23 is believed to be patentable over Sachdeva et al., Kleshinski et al., and DiCarlo et al. Because claim 27 depends from claim 23, it is also patentable over Sachdeva et al., Kleshinski et al., and DiCarlo et al. for the same reasons and because it adds significant elements to distinguish it further from the art.

Claims 24 and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kaisha. As described above, claim 23 is believed to be patentable over Kaisha. Because claims 24 and 26 depend from claim 23, they are also patentable over Kaisha for the same reasons and because they add significant elements to distinguish them further from the art.

Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of

Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

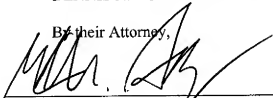
Respectfully submitted,

DENNIS A. BOISMIER ET AL.

By their Attorney,

Date:

March 9, 2006



Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050